REMARKS

In the amendment filed February 2, 2006, claims 5 and 21-30 were canceled, and not withdrawn as erroneously stated in the Office Action Summary. On page 2 of the Office Action it is stated that claims 5 and 21-30 are canceled but claims 1-4 and 5-20 are pending.

Claims 1-4 and 6-20 are rejected under U.S.C. 103(a) as being unpatentable over Imai et al (US 5,978,590, "Imai") in view of Chiloyan et al (US 200210095501 A1, "Chiloyan"). This rejection is not applicable to the amended claims.

Claims 1 and 11 include: a system BIOS; a server including a script associated with a dongle based identification device, an identifier and order information; a computer system coupled to the server and including a port; the identification device coupled to the port, the device including the identifier; the computer system configured to: in response to being powered up, boot by executing instructions from the BIOS; read the identifier from the device; provide the identifier to the server; in response to receiving the identifier, the server causing the identifier to be installed with the order information and the script; and cause the script associated with the identifier to be executed to cause one or more software components to be installed onto the computer system; and the identifier being removed from the computer system and returned to a pool of identification devices for reuse.

Imai clearly teaches an identifier retrieved from a server. However, in the present invention, the identifier is stored in a dongle based identification device removably attached to a port of the computer system, Fig. 3, step 308. The identifier is provided to a server, Fig. 3, step 314. When software installation is complete, Fig. 3, step 316, the identification device is removed, Fig. 3, step 318.

The invention clearly claims a dongle based identification device coupled to the port and removed after installation is complete. Spec. @ 3, lines 12-15. Imai neither teaches nor suggests the claimed invention. This invention obviates the need for using floppies for loading systems with the software needed.

As the PTO recognizes in MPEP §2142:

The Examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness.

The USPTO clearly cannot establish a *prima facie* case of obviousness in connection with the amended claims for the following reasons.

35 U.S.C. §103(a) provides that:

[a] patent may not be obtained ... if the differences between the subject matter sought to be patented and the prior art are such that the <u>subject matter as a whole</u> would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains ... (emphasis added)

Thus, when evaluating a claim for determining obviousness, <u>all limitations of the claim must be evaluated</u>. However, the references, alone, or in combination, do not teach a system BIOS; a server including a script associated with a dongle based identification device, an identifier and order information; a computer system coupled to the server and including a port; the identification device coupled to the port, the device including the identifier; the computer system configured to: in response to being powered up, boot by executing instructions from the BIOS; read the identifier from the device; provide the identifier to the server; in response to receiving the identifier, the server causing the identifier to be installed with the order information and the script; and cause the script associated with the identifier to be executed to cause one or more software components to be installed onto the computer system; and the identifier being removed from the computer system and returned to a pool of identification devices for reuse.

Therefore, it is impossible to render the subject matter of the claims as a whole obvious based on a single reference or any combination of the references, and the above explicit terms of the statute cannot be met. As a result, the USPTO's burden of factually supporting a *prima facie* case of obviousness clearly cannot be met with respect to the claims, and a rejection under 35 U.S.C. §103(a) is not applicable.

There is still another compelling, and mutually exclusive, reason why the references cannot be combined and applied to reject the claims under 35 U.S.C. §103(a).

The PTO also provides in MPEP §2142:

[T]he Examiner must step backward in time and into the shoes worn by the hypothetical "person of ordinary skill in the art" when the invention was unknown and just before it was made. In view of all factual information, the Examiner must then make a determination whether the claimed invention "as a whole" would have been obvious at that time to that person. ...[I]mpermissible hindsight must be avoided and the legal conclusion must be reached on the basis of the facts gleaned from the prior art.

Here, the references do not teach, or even suggest, the desirability of the combination because neither teaches or suggests providing a system BIOS; a server including a script associated with a dongle based identification device, an identifier and order information; a computer system coupled to the server and including a port; the identification device coupled to the port, the device including the identifier; the computer system configured to: in response to being powered up, boot by executing instructions from the BIOS; read the identifier from the device; provide the identifier to the server; in response to receiving the identifier, the server causing the identifier to be installed with the order information and the script; and cause the script associated with the identifier to be executed to cause one or more software components to be installed onto the computer system; and the identifier being removed from the computer system and returned to a pool of identification devices for reuse.

Thus, neither of these references provides any incentive or motivation supporting the desirability of the combination. Therefore, there is simply no basis in the art for combining the references to support a 35 U.S.C. §103(a) rejection of the claims.

In this context, the MPEP further provides at §2143.01:

The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. (emphasis in original)

In the above context, the courts have repeatedly held that obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching, suggestion or incentive supporting the combination. In the present case it is clear that the USPTO's combination arises solely from hindsight based on the invention without any showing, suggestion, incentive or motivation in either reference for the combination as applied to the claims. Therefore, for this mutually exclusive reason, the USPTO's burden of factually supporting a *prima facie* case of obviousness clearly cannot be met with respect to the claims, and the rejection under 35 U.S.C. §103(a) is not applicable.
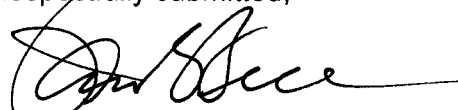
In view of all of the above, the allowance of claims 1-4 and 5-20 is respectfully requested.

The Examiner is invited to call the undersigned at the below-listed telephone number if a telephone conference would expedite or aid the prosecution and examination of this application.

Respectfully submitted,

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